UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,794	07/02/2007	Johan Einar Hustad	BRYN/0013	8990

26290 7590 05/12/2009

PATTERSON & SHERIDAN, L.L.P.
3040 POST OAK BOULEVARD
SUITE 1500
HOUSTON, TX 77056

EXAMINER	
BERNSTEIN, DANIEL A	
ART UNIT	PAPER NUMBER
3743	
MAIL DATE	DELIVERY MODE
05/12/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 04/27/2009 have been fully considered but they are not persuasive.

2. In regards to the applicants argument that the final rejection was intended to reject claims numbered 5, 6 and 8 but the 103(a) rejection recites the rejection of claims 1-4, the examiner agrees. The statement of rejection should read as the following: "Claims 5-8 rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,964,397 to Purcell et al. (Purcell) in view of NO 63947 to Cappelen and in further view of US 4,502,395 to Barnett (Barnett)."
This mistake was an obvious error and the applicant assumed correctly that the rejection was directed towards claims 5, 6 and 8.

3. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Purcell teaches that it is well known to install an afterburning device in an existing stove (Col. 3 lines 10-15). The applicant has argued that Purcell is not relevant prior art and that there would be no motivation to "put a Purcell device into the stove in the first place". Clearly, if one

were to read the specification of Purcell, it is stated that a principle object of Purcell's invention is to install the device into an existing stove.

The applicant further argues that there is no motivation to combine Purcell with Cappelen. The specification of Purcell does not teach that the afterburning device of Purcell was formed by folding, so the reference was combined with an afterburning device that does teach folding, Cappelen. Cappelen is prior art that is from the same field of endeavor as the applicants claimed invention and teaches that forming an afterburning device by folding is well known. The examiner maintains that this combination is proper, because there are only so many known options for constructing the afterburning device of Purcell and folding would have been well within the capabilities of someone of ordinary skill in the art. Merely claiming that the device is formed by folding is not sufficient to distinguish the claimed invention over the prior art of record.

4. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The examiner maintains that the combination of Purcell and Barnett is not hindsight since Barnett clearly teaches that it is well known to deliver ambient air

through an air aperture to the combustion chamber. This would have been obvious to someone of ordinary skill, because either the combustion air is drawn from inside or outside the stove. Since drawing ambient air into a stove is well known, it would have been well within the capabilities of someone of ordinary skill in the art at the time of the invention to modify the afterburner of Purcell to draw secondary combustion air from outside the combustion chamber.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL A. BERNSTEIN whose telephone number is (571)270-5803. The examiner can normally be reached on Monday-Friday 8:00 AM - 5:00 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Rinehart can be reached on 571-272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DAB

/Kenneth B Rinehart/
Supervisory Patent Examiner, Art Unit 3743